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**Consolidated Food Services, Inc. d/b/a Express
Gourmet and Local 24, Hotel and Restaurant
Employees International Union, AFL-CIO.**
Case 7-CA-44786

July 27, 2004

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND WALSH

SUPPLEMENTAL DECISION AND ORDER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On March 14, 2003,¹ the National Labor Relations Board issued a Decision and Order directing the Respondent to, among other things, make whole former unit employees for any loss of earnings and other benefits resulting from the Respondent's failure to bargain with the Union concerning the effects of the closure of its Detroit Metropolitan Airport facility, in violation of Section 8(a)(5) and (1) of the Act. On November 3, 2003, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing in full the Board's Order.²

A controversy having arisen over the amount of backpay due the former unit employees, on April 15, 2004, the Regional Director issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order. The compliance specification notified the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. The Respondent failed to file an answer.

By letter dated May 12, 2004, the Regional Attorney advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by May 20, 2004, a motion for default judgment would be filed.³ The Respondent did not file an answer.

On June 14, 2004, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On June 18, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to

Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's motion for default judgment. Accordingly, we conclude that the net backpay due the unit employees is as stated in the compliance specification and we will order the Respondent to pay those amounts to the employees, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Consolidated Food Services, Inc. d/b/a Express Gourmet, Southfield, Michigan, its officers, agents, successors, and assigns, shall make whole the individuals named below by paying them the amounts following their names, plus interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws:

Madeana Brown	\$ 555.00
Degeane Cleveland	555.00
Valerie Carter	1,482.00
Laizara Dillard	555.00
Barbara Frazier	1,218.75
Stephanie L. Hamby	840.00
Antonio Henry	555.00
Alford Hickson	555.00
Terri A. Jefferson	555.00
Laurie Ledford	592.00
Gary Lewis	555.00
Johnnie Myles	555.00
Kamani Patterson	600.00

¹ 338 NLRB No. 114.

² 81 Fed. Appx. 13.

³ Copies of the May 12, 2004 letter were sent to the Respondent by certified and regular mail. The copy sent by certified mail was returned to the Regional Office marked "unclaimed." It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB No. 36 fn. 2 (2003), and cases cited therein.

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

Steve Putman	20.00
Derrick Reed	50.00
Elmuhammad Rhodes	555.00
Antonie Ruffin	555.00
William D. Smith	555.00
Rencee Street	555.00
Rochelle Street	555.00
Toroitez Talyor	1,536.00
Clara Urquhart	555.00
TOTAL	\$14,108.75

Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Dennis P. Walsh,	Member
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Dated, Washington, D.C., July 27, 2004

(SEAL)

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